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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DAWOOD AHMED,
10 Plaintiff,

11 v.

12 MICHAEL CHERTOFF, *et al.*,
13 Defendants.
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Case No. C08-1347RSL

ORDER GRANTING MOTION
TO REMAND TO USCIS AND
REMANDING CASE

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17 **I. INTRODUCTION**

18 This matter comes before the Court on defendants' motion to remand plaintiff's
19 naturalization application to United States Citizenship and Immigration Services ("USCIS"), and
20 on plaintiff's motion for a naturalization hearing. For the reasons set forth below, the Court
21 grants defendants' motion and denies plaintiff's motion.

22 **II. DISCUSSION**

23 **A. Background**

24 On January 27, 2004, plaintiff filed his N-400 application for naturalization with USCIS
25 (the "application"). USCIS interviewed Mr. Ahmed on December 6, 2004, but then failed to
26 adjudicate his application in a timely fashion. On September 9, 2008, plaintiff filed his petition
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1 for a naturalization hearing with this Court pursuant to 8 U.S.C. § 1447(b). The Court ordered
2 defendants to show cause why plaintiff should not be naturalized and, if appropriate, provide a
3 proposed plan for the prompt administrative adjudication of his application (Dkt. #4). The Court
4 granted the parties a continuance to allow USCIS to interview plaintiff on December 8, 2008
5 (Dkt. #6). Subsequently, defendants responded to the Court's order to show cause and moved to
6 remand on January 23, 2009. Plaintiff filed a cross-motion for a naturalization hearing on
7 January 29, 2009.

8 **B. Analysis**

9 An applicant may petition for judicial naturalization when USCIS fails to render a
10 decision within 120 days. The relevant statute, 8 U.S.C. § 1447(b), provides:

11 If there is a failure to make a determination under [8 U.S.C. § 1446] before the end of the
12 120-period after the date on which the examination is conducted under such section, the
13 applicant may apply to the United States district court for the district in which the
14 applicant resides for a hearing on the matter. Such court has jurisdiction over the matter
and may either determine the matter or remand the matter, with appropriate instructions,
to the Service to determine the matter.

15 8 U.S.C. § 1447(b) (2006). USCIS first interviewed Mr. Ahmed on December 6, 2004. Plaintiff
16 still awaits a decision on his application over four years later. Accordingly, this Court has
17 jurisdiction over plaintiff's complaint. See Hovsepian v. United States, 359 F.3d 1144, 1164
18 (9th Cir. 2004). The Court may either review the application *de novo* or remand the matter to
19 USCIS.

20 Defendants argue that USCIS is still evaluating plaintiff's eligibility for naturalization,
21 and urge the Court to remand. Specifically, defendants cite information from the Federal Bureau
22 of Investigation ("FBI") which suggests that plaintiff may be a national security risk. See
23 Dkt. #8 (Brouillard Decl.), Ex. 1¹. Defendants do not disclose when the agency first learned of
24 the FBI's concerns, but nevertheless claim that USCIS cannot adjudicate Mr. Ahmed's petition

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26 ¹The Court will grant plaintiff Ahmed's unopposed motion (Dkt. #13) to seal the FBI
27 memorandum. The Clerk of Court is hereby directed to seal Dkt. # 8-2 in the above-captioned matter.

1 without further investigation.

2 Plaintiff adamantly rejects his characterization as a possible security risk, and urges the
3 Court to conduct a naturalization hearing. Plaintiff argues that remand would be futile because
4 USCIS has already decided to deny his application. Yet the record does not support that
5 conclusion; defendants request more time to make a determination. Plaintiff cites a number of
6 cases in which courts have granted an evidentiary hearing, including some from this district. For
7 example, in Ghanim v. Gonzales, No. 07-594MJP, 2007 U.S. Dist. LEXIS 57182 (W.D. Wash.
8 Aug. 6, 2007), the court granted a hearing over defendant's objection that the petitioner's "name
9 check" was not complete. The government claimed that a backlog within the agency prevented
10 USCIS from timely adjudicating the application. This is distinguishable from the facts in the
11 present case. Here, defendants do not claim procedural delays. Rather, defendants assert that a
12 background check raised national security concerns that warrant further investigation.

13 This Court sympathizes with Mr. Ahmed's understandable frustration over the prolonged
14 delay. However, he may not obtain a more favorable or expeditious result from this Court,
15 which would have to conduct a *de novo* hearing following discovery by the parties. Based on
16 the documents defendants submitted, the agency may have a legitimate reason for delaying
17 adjudication. Most importantly, the agency is in the best position to render a decision on
18 plaintiff's application because it is the designated agency responsible for determining the
19 issuance of immigration benefits. This Court is not equipped to conduct the kind of
20 investigation required to determine whether an applicant presents a risk to national security or
21 public safety. See Aslam v. Gonzales, No. 06-614MJP, 2006 U.S. Dist. LEXIS 91747, at *6
22 (W.D. Wash. Dec. 19, 2006) (citing El-Daour v. Chertoff, 417 F. Supp. 2d 679, 684 (W.D. Pa.
23 2005)). Still, this Court recognizes that plaintiff remains in a state of limbo until USCIS reaches
24 a decision. Plaintiff can request a hearing before an immigration officer only after USCIS
25 decides his claim. 8 U.S.C. § 1421(c), (d); 8 U.S.C. § 1447(a); 8 C.F.R. § 336.2. While
26 defendants urge the Court to remand without time restrictions, a court-imposed time frame is

1 appropriate given the previous delay. Defendants have not offered any information regarding
2 how long the investigation might take, raising concerns that it could drag on indefinitely without
3 an established time frame. Accordingly, this Court remands the matter back to the USCIS with
4 instructions to complete adjudication within ninety days. This time frame considers both
5 defendants' interest in public safety and national security, and plaintiff Ahmed's individual
6 interest in having his naturalization application adjudicated in a timely manner. If USCIS is
7 unable to adjudicate his application within ninety days, defendants may move the Court to
8 reopen the case and request additional time.

9 **III. CONCLUSION**

10 For all of the foregoing reasons, the Court GRANTS plaintiff's motion (Dkt. #13) to seal
11 Dkt. #8-2, GRANTS defendants' motion to remand and dismiss (Dkt. #7), DENIES plaintiff's
12 motion for a naturalization hearing (Dkt. #9), REMANDS this case to USCIS for adjudication of
13 plaintiff's naturalization application within ninety days, and DISMISSES this action without
14 prejudice.

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16 DATED this 5th day of March, 2009.

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19 Robert S. Lasnik
20 United States District Judge
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